DOCKET NO. CV10-6010699 S	: SUPERIOR COURT
JOSEPH TAGLIARINI	: JUDICIAL DISTRICT OF NEW HAVEN
V.	: AT NEW HAVEN
NEW HAVEN BOARD OF ALDERMAN, CITY PLAN COMMISSION, ET AL	: MARCH 11, 2011

MEMORANDUM OF DECISION

(1)

This case involves an appeal from the New Haven Board of Aldermen approving an application by Yale for a zoning amendment providing for the creation of a so-called Planned Development District (PDD) on property owned by Yale on Whitney Avenue in New Haven. Very basically the plaintiff argues that the decision to create the PDD was "arbitrary and illegal substantively" and "fatally flawed procedurally." Yale submitted its PDD application on October 13, 2009. In accordance with the city charter and ordinances and the Zoning Ordinance the Board of Alderman (BOA) referred the application to the City Plan Commission (CPC) for review. The CPC conducted a public hearing on November 18, 2009 and the public and the applicant and others were allowed to submit further material and comments through December 2d. On December 2d the CPC voted unanimously to make a positive recommendation on the application to the BOA with certain suggested conditions. The CPC adopted and issued extensive findings by way of a report which were transmitted to the BOA.

The Legislation Committee of the BOA held hearings on the application on January 28 and February 11, 2010. The Legislative Committee after the hearings unanimously adopted the CPC report, with modifications, and reported the application back to the BOA with a positive recommendation. On March 1, 2010 the full BOA approved, after deliberation, the PDD application by a vote of 25 to 1. An ordinance creating the PDD was adopted and the BOA also adopted the CPC report with amendments suggested by the Legislation Committee.

The plaintiff appealed from the BOA's approval of the PDD application filed by Yale.[1]

The court will first note the tests formulated by our court to determine the legality of a PDD approved by the Board of Aldermen. *Campion v. Board of Aldermen*, 278 Conn. 500 (2006) noted that New Haven's "source of zoning power is a special act passed by the General Assembly in 1925." Id. page 510. The court then noted that "the creation of planned development districts pursuant to Section 65 of the New Haven Zoning Ordinance is comparable to the creation of floating zones which is a practice that (the court has) "deemed authorized by enabling legislation similar to the 1925 Special Act," id. page 515. The court went on to say: "In sum, like a floating zone, a planned development district 'alters the zone boundaries of the area

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[1] It is quite clear that the plaintiff must plead and prove aggrievement to permit the court to have jurisdiction over a zoning appeal. The plaintiff, of course, has the burden of proof on this matter since he initiated the appeal, see *Hughes v. Town Planning & Zoning Commission*, 156 Conn. 505, 507 (1968); *Moutinho v. Planning & Zoning Commission*, 278 Conn. 660, 664-666 (2006). The plaintiff offered into evidence a deed, indicating he is the owner of a residence which abuts the property which is the subject of this appeal; therefore, he is statutorily aggrieved.

by carving a new zone out of an existing one[2] and consequently, represents a legitimate legislative act by the city to regulate growth and meet the 'need for flexibility in modern zoning ordinances . . .' . . . . we conclude the language of the 1925 Special Act is sufficiently broad to permit the creation of planned development districts pursuant to § 65 of the New Haven Zoning Ordinance," id. pp. 517-518.

Analogizing the creation of a PDD to a legislative act of the zoning authority, the court quoted from *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527 (1991) for the standards to be used by the courts in assessing whether a PDD, such as the one before the court, enacted pursuant to § 65 of the local zoning ordinance was "within the authority granted by the 1925 Special Act", 278 Conn. at page 527. *Protect Hamden/North Haven* at pages 543-544 which at page 527 was quoted in *Campion* said:

> "Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change. . . . The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function. . . . This legislative discretion is wide and liberal, and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally. . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary

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[2] Approval of a PDD effects a zone change and is subject to the same court review as any other zone change, cf Blakeman v. Planning & Zoning Commission, 82 Conn. App. 632, 643-644 (2004). As the court said in Campion a PDD creates a new zone and carves a new zone out of an existing one, 278 Conn. at p. 514, pp. 517-518.

> changes in such fields as architecture, transportation, and redevelopment. . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the [legislative] action of the commission is twofold: (1) The zone change must in accord with a comprehensive plan . . . and (2) it must be reasonably related to the normal police power purposes enumerated in [the city's enabling legislation] . . ."

The last mentioned test applies to all zone changes and is not unique to PDDs as Fuller notes at § 33:2 of Volume 9A of *Land Use & Practice*, Conn. Practice Series; citing *First Hartford Realty Corp. v. P&Z Commission of Branford*, 165 Conn. 533, 541 (1973); *Protect Hamden/North Haven v. P&Z Commission of Hamden*, 220 Conn. 527, 544 (1991); *Ghent v. Zoning Commission*, 220 Conn. 584 (1991); *Damick v. P&Z Commission of Southington*, 158 Conn. 78, 83 (1969).

A zone change such as the creation of the PDD is the quintessential legislative act which can only be reviewed under standards just mentioned in *Campion* and repeated in many cases, see also § 33:2 of Fuller just referred to at pp. 233-234.

Prior to examining the two pronged test for evaluating the appropriateness of PDDs, the court did make certain observations about floating zones and spot zoning which this court believes are useful in the analysis to be applied to this case in that they are relevant in determining whether there has been compliance with the comprehensive plan or better put whether such a finding is arbitrary and illegal by the fact of an unacceptable incongruity with the

comprehensive plan. The court will have to digress to discuss similar problems that can be raised by PDD applications in this regard. First as noted the court said that floating zones differ "from a planned development district in certain respects but we conclude, however, that these differences are largely procedural in nature and are not significant enough to invalidate planned development districts that derive their authority from the city's 1925 Special Act," 278 Conn. at page 518 which permitted the creation of planned development districts. But then, referencing at page 519 to two respected authorities in this area, Fuller and Tondro, the *Campion* court went on to say that a floating zone is a mechanism "to allow individual treatment of properties." Such a zone can be applied anywhere in a city and " 'can result in individual preferences and respond to development pressures rather than considering the best area for location of particular uses" R. Fuller, 9 Conn. Practice Series'. Land Use Law and Practice (2d.ed. 1999). § 3.8 pp. 32-33. Furthermore, 'a floating zone is normally used to benefit a single landowner' and 'it is this potential for favoritism that is the real issue raised by the device." T. Tondro (Connecticut Land Use Regulation) page 72," 278 Conn. at page 519. The court at the same page said, referring to the just stated observations as to floating zones, - "The same concerns are present with respect to planned development districts" id at page 519.

The court secondly went on to refer to spot zoning. In footnote 15 the *Campion* court noted that spot zoning's vice is that it singles out for special treatment a lot or small area in a way

that does not further the comprehensive plan for the community as a whole. The *Campion* court held that it could not find that spot zoning took place as to the PDD before the court.

The plaintiff here also claims that spot zoning was permitted by the creation of the PDD. Cases such as *Kimball v. Court of Common Council*, 148 Conn. 97, 102 (1961) which found spot zoning said "The new use of the property must do more than meet the wishes of the owner in carrying out some plan of his; it must serve the public interest in the zoning development of the community," id. In *Konigsberg v. Board of Aldermen*, 283 Conn. 553, 591-592 (2007) the court said: "Spot zoning is the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood."

The law on spot zoning sought to address a problem that could present itself with planned development districts. That problem, as indicated by the discussion in *Campion* at footnote 15, was the issue of favoritism toward a particular zone change applicant. But they question favoritism in relation to what criterion? In *Bartram v. Planning and Zoning Commission*, 136 Conn. 89 (1949) the court said: "The vice of spot zoning lies in the fact that it singles out for special treatment a lot or small area in a way that does not further such a (comprehensive) plan, id. p. 94.

The law and cases on spot zoning are only relevant because of the manner in which the concern or favoritism is addressed by spot zoning case law[3]. Thus the *Konigsberg* case at 283

[3] See, for example, Vol. 9 of Fuller Land Use Law and Practice at § 4:8, page 76 where

Conn. page 593 cited *Loh v. Town Planning and Zoning Commission*, 161 Conn. 32, 38 (1971) which concluded that "since the change of zone . . . is in harmony with the comprehensive plan it cannot be classified as spot zoning."

As further explicitly said in *Summ v. Zoning Commission*, 150 Conn. 79, 88 (1962): "The basic purpose of requiring conformance to a comprehensive plan is to prevent the arbitrary, unreasonable, and discriminatory exercise of the zoning power . . . The requirement serves as an effective brake on spot zoning" (and this court would note addresses the problem of unacceptable favoritism which the doctrine was created to avert). And to settle the matter *Campion* explicitly adopted the two pronged test of conformity to the comprehensive plan and reasonable relation to normal police powers in rejecting a spot zoning claim brought against the PDD in that case just as it passed on the viability of the PDD itself using that test.

But these tests - conformity to a comprehensive plan and that the zone change be related to the police power purposes of Section 8-2 are the very same tests applied to determine the legality of a PDD and a floating zone, see *Campion*.

Thus in deciding whether the adoption of a PDD is justified under the law the issues of favoritism and singling out for special treatment are addressed in the same way in the floating zone context or where the court addresses a spot zoning claim - the two part test is applied. In

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he says that: "The spot zoning concept has become obsolete because the size of the parcel is immaterial if the commission action meets the two part test for a zone change: (1) the zone change is in accordance with the comprehensive plan and (2) it is reasonably related to the

this context favoritism claims do not operate as a separate consideration apart and distinct from an analysis of whether there has been conformity with the comprehensive plan.

(2)

The court will now make some general observations about the two concepts set forth in *Campion* as prerequisites for the legality of a PDD (1) is the zone change in accord with the comprehensive plan (2) is it reasonably related to the normal police power purposes set forth in § 8-2 of the general statutes and the city's enabling legislation, which mirror the requirements of subsection (2) of Section 25.

(a)

Conformity with Comprehensive Plan

What is a comprehensive plan and what are its purposes? In *Clark v. Town Council*, 145 Conn. 476, 486 (1958) the court, referring to earlier case law, sought to answer these questions. The court said: " 'A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential uses of the properties' . . . . It may be found in the scheme of the zoning regulations themselves . . . It differs from a master plan . . . The basic purpose of requiring conformance to a comprehensive plan is to prevent the arbitrary, unreasonable and discriminatory exercise of the zoning power . . . The requirement serves as an

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normal police power purposes in § 8-2 of the General Statutes.

effective brake upon spot zoning." To come full circle then, compliance with the comprehensive plan dispels the conclusion that any zone change, including the creation of a PDD, is based on arbitrary decision making or is prompted by favoritism to a particular applicant for the zone change.

In *Protect Hamden/North Haven*, 220 Conn. at page 551 the court said that "In the absence of a formally adopted comprehensive plan, a town's comprehensive plan is to be found in the scheme of the regulations themselves." New Haven has a Comprehensive Plan which was adopted in 2003. The 1925 enabling legislation authorizing the city to approve PDDs has been incorporated into Section 65 of the city Zoning Ordinances and the city's Zoning Map effective March 21, 2007 shows scores of PDDs throughout the city. PDDs are alluded to in the "Downtown" section of the Comprehensive Plan which is in the "Plan Summary" Chapter 2 at II27. That chapter's recommendations for "Housing and Neighborhood Planning sets out standards similar to those included in Section 65, see Chapter 2, at II.8, subsections two and four. On the other hand it is interesting to note, that despite the city's formal adoption of a Comprehensive Plan in October 2003 it is said in *Konigsberg* that: "It is established that the Comprehensive Plan is to be found in the zoning regulations themselves and the zoning map, which are primarily concerned with the use of property," 283 Conn. at 584-585, quoted in *Dutko v. Planning & Zoning Board*, 110 Conn. App. 228, 241 (2008).

The language of *Konigsberg* does set forth a complication that this court at least did not need in this otherwise complicated case when referring to subsection A(3) of Section 65 it said: Section 65 "allows an owner, lessee, or any governmental agency to file an application to create such a planned development 'in instances where tracts of land of considerable size are developed, redeveloped, or renewed as integrated and harmonious units and where overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in the ordinance" (see subsection A(3) of Section 65), 283 Conn. at pp. 565-566. Does this suggest Section 65 modifies or adds to considerations under the Comprehensive Plan in passing on a PDD?

Section 65A(1) requires that to be eligible a PDD application must be "in accordance with the Comprehensive Plan." But subsection A(3), as noted in *Konigsberg*, states: "it must be so designed in its space, allocation, orientation, texture, materials, landscaping and other features as to produce as to produce an environment of stable and desirable character, complimenting the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and the city." If you have A(1) why separately have A(3) and does this observation support the implications of the language of *Konigsberg* at 283 Conn. 565-566 quoted above?

It could be argued that, in effect, *Campion* dealt with this issue by simply conflating conformity with the Comprehensive Plan with meeting the requirements of Section 65. The

court noted in that case that there was no dispute that the PDD was consistent with the comprehensive plan and furthered the city's police powers. The findings of the Board of Alderman were quoted:

> "The proposed commercial development and single family home are in accordance with the comprehensive plans of the [c]ity in that it reuses a previously developed waterfront site in a manner that removes traffic from side streets, fully accommodates the parking needs of the catering facility on its site, creates a viable commercial compound in a manner that minimizes conflicts with the surrounding residential community, and eliminates the non conforming Cove Manor nursing home use in favor of [a] landscaped parking area and [a] single family home. . . . The design provides buffers for the existing adjacent residential development in accordance with the objectives of [§] 65.A. of the [New Haven] [z]oning [o]rdinance. . . . The design, quality of materials and site development are consistent with the letter and intent of [§] 65 of the [New Haven] [z]oning ordinance. . . ." 278 Conn. at page 578.

Leaving all this aside, the question remains how is a court to determine if there has been compliance with the comprehensive plan. Does it labor through every paragraph of the plan to see if each specific component has been met, is a substantial compliance test applied, or if there is full compliance with an important part of the plan can a failure to comply with another section thereof be overlooked? Again *Konigsberg* raises the question. There the court said: "The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community," 283 Conn. at pp. 584-585. Also *Dutko v. Planning & Zoning Commission of Milford*, 110 Conn. App. 228.

(b)

Relation to Normal Police Powers

The second requirement is that the PDD zone change must be related to the normal police power purposes set forth in the city's enabling legislation which are enumerated in a Special Act of 1925. In 1925 the legislature adopted this Special Act. The act forms the basis of the City of New Haven's zoning authority and provides the city with the necessary enabling authority for § 65 of the New Haven zoning ordinance. Creation of a planned development district must be done pursuant to Section 65. The 1925 Special Act has been incorporated into the city's charter. Section 2 of the Special Act provides as follows concerning police powers.

> "Sec. 2. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population . . . . Such regulations shall be made with reasonable consideration, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."

. . . . .

The court will try to apply the foregoing general observations to the issues raised by the plaintiff's appeal and the factual and procedural context in which the appeal arises.

(3)

In deciding this case the court must examine whether the requirements of Section 65 have been met and, perhaps more to the point, whether the finding by the Board that they have been so

met satisfies the test adopted in *Campion* for the review of decisions to grant PDDs. The court, later in this decision will set out the three Section 65 prerequisites for approving such an application but would now note that the *Campion* test, in addition to requiring accordance with the Comprehensive Plan, which is a Section 65 requirement too, also states any decision granting a PDD application must not be illegal or arbitrary. The court will first address this procedural fairness requirement before discussing the Comprehensive Plan and whether the record establishes that the Board acted within the proper ambit of its discretion in finding the application was in accordance with the Comprehensive Plan and met the Section 25 prerequisites. At the conclusion of this discussion it will address the issue of how the application relates to normal police powers.

(i)

Was the decision arbitrary or the result of any illegality? If all that is meant by this is whether it complied with the comprehensive plan, it is redundant. What is meant, in all likelihood, is that type of activity which deprives a party of that fundamental fairness which he or she is entitled to in actions by governmental agencies in dealing with administrative bodies such as zoning agencies and Boards of Aldermen exercising zoning authority. Such matters would include ex parte discussions, evidence of predetermination, or bias, see for example *Harrison v. New Haven Zoning Board of Appeals*, 37 CLR 640 (2004) where cases are collected, as to bias see *OLG Industries v. Planning & Zoning Commission*, 232 Conn. 419, 429, 430 (1995) on the

issue of predetermination see *Fuller's* discussion in Land Use and Practice, Vol. 9B of Connecticut Practice Series at § 47.2.

The record is barren of any such evidence and no motions to supplement the record by way of discovery or deposition practice were filed to advance such an argument.

A prerequisite of fundamental fairness, however, is not limited to overtly illegal acts. The decision to grant a zone change including a PDD must not be arbitrary, based on caprice or a less than thorough record, or failure to allow the creation of such a record; parties cannot be unfairly prevented from advancing positions opposed to a zone change that was ultimately granted.

The rules developed for the fair conduct of administrative hearings logically would apply to hearings before city planning commissions, Boards of Aldermen authorized to enact zone changes such as PDDs and their Legislative Committees entrusted with reviewing such applications. Thus our court has said "we have recognized a common law right to fundamental fairness in administrative hearings," *Grimes v. Conservation Commission*, 266, 273 (1997).

In language repeated in later cases, including land use cases, the court in *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 407-408 (1998) said: "Although proceedings before administrative agencies such as the defendant are informal and are conducted without regard to the strict rules of evidence, the hearing must be conducted so as to not violate the fundamental rules of natural justice." The court noted parties have a right to produce relevant evidence, to know the facts on which the agency is asked to act, and to offer rebuttal evidence.

See for example, *Pizzola v. Planning & Zoning Commission*, 167 Conn. 202, 207 (1974). This rule is formulated often in situations where an agency is being asked to enact a zone change which would affect the rights or interests of those having a position contrary to the applicant. This is especially so when the government entity involved must use criteria established by statute or the courts to make its decision such as here - Section 65 requires an examination of how a PDD relates to a surrounding neighborhood and of the Comprehensive Plan. Such an examination necessarily invites input from neighborhood residents or businesses and even more broadly a wide range of organizations or citizens and citizen groups who have an interest in seeing to it that the policies of their city's Comprehensive Plan are recognized and enforced.

In *Lee v. Planning & Zoning Commission*, 112 Conn. App. 484 (2009) a plaintiff appealed from a decision by the Commission to amend its zoning regulations and map. The trial court's dismissal of the appeal was upheld. After reviewing the broad discretion that must be given to zoning agencies when court's review their legislative actions, the court said that "a review of the record reveals that the setbacks were debated at length and fully considered in light of the comprehensive plan for development and the commission's legislative powers," id p. 492.

In effect the court was saying that a prerequisite of deference to a broad discretion was the fair conduct of any hearing on which that discretion is to be based.

In fact such notions of fairness must be imported into review of the actions of the governmental entities who acted here in light of the fact of the limited review of the actions taken which were done in a legislative capacity.

A review of this voluminous record indicates to the court at least that the hearings conducted here were not conducted in an arbitrary manner nor was the decision permitting the PDD arbitrary.

A review of the record indicates that the various hearings were not arbitrarily and capriciously conducted nor was the decision reached by the Board of Alderman therefore arbitrary in the procedural sense just discussed whether or not it was otherwise valid under substantive appellate law.

The City Plan Commission held two hearings, one on November 18, 2009 and the final one on December 16 of the same year. The first hearing comprised one hundred and eleven pages of transcript, the second thirty nine pages. The deputy director of zoning spent several pages discussing the standards set forth in Section 65 and the process to be conducted before the commission, the Legislative Committee of the Aldermen, and the Board of Aldermen itself. The attorney for the applicant made a presentation after a brief presentation by Mr. Morand, an associate vice president of Yale.

Then the applicant presented the testimony of Laura Cruishank, the University Planner.

A staff member then referred to letters supporting the project and there was an acknowledgement of receipt of a Traffic Department report on the project.

The chairman requested a sketch be made concerning the connection of the building with its neighbors. From what had been submitted he speculated the SOM building "looks more monumental than it may be." He also said from what had been submitted he could not determine how the space ties in with the church on the south side of the PDD - he wanted to know what happens on either side of the building. Another concern was the sun reflecting off the building and its effect on drivers. Mr. Lemar who was an alderman and on the commission inquired as to what can be done about the effect of the project on the parcels along Bradley Street. The chairman then had a question about the effect on traffic flow from vehicles exiting the site. The Yale representative attempted to respond to the various concerns.

A lawyer for the New Haven Lawn Club then spoke of the club's concerns with the setback on the northside, the sideline and driveway and drop off points along the driveway; also he said "traffic needs some further review." The chairman asked for documents that might support the club's positions which could be examined before the next scheduled meeting.

The plaintiff then spoke and clearly articulated some of his concerns with the application. People spoke in favor of the project and people who were opposed to it, including a representative of the New Haven Preservation Trust and an attorney who spoke for the Urban Design League.

The applicant then responded and in light of the fact that a further meeting was being held indicated the applicant would make a written response to the questions raised.

Mr. Lemar said the issues raised were best addressed by the Board of Alderman (Board) where they could be given more time and public input.

The chairman then continued the meeting at which time the application would be voted upon. The record was held open until December 2nd to submit written materials but the record in fact was then further held open to December 11th so people could respond. The next meeting was scheduled for December 16, 2009.

At that meeting the various written responses to the issues raised were discussed. A staff member then noted letters came in opposing the application. The proposed conditions on the application were discussed. It was recommended that a viable pedestrian and bike path be maintained from Pearl Street to Whitney Ave. Another condition concerned increasing the sideline from eight to sixteen feet on the northern property line - as submitted the building would be only eight feet from the line. Several conditions were standard but it was recommended that a full site plan review for the demolition process was necessary since the site abuts residential properties.

Building height and floor coverage for the new application were discussed partly in relation to what would be considered under the preexisting zoning regulations for RO and RM2 zones. Alderman Lemar discussed his support for the project but noted reservations that he had.

The commission then approved the City Plan Report which adopted it with conditions and the matter was referred to the Board after unanimous approval.

The Legislative Committee of the Board then reviewed the proposed PDD in two meetings; a public notice was given of the first meeting to be held January 28, 2010. Ms. Cruishank again reviewed the proposal and Mr. Morand made a presentation for the applicant. A committee member, Mr. Elicker, had questions about how the project would affect traffic patterns and another member, Goldson, inquired as to why the courtyard was so large and wanted to know what its functions were. Opponents had noted that the existence of this central courtyard increased the mass of the building and was a factor in its closeness to the Bradley Street properties. Mr. Morand and Ms. Cruishank gave responses to these issues. Goldson also wanted to know how many abutters there were to the property and how many of the people signing the petition approving the application were abutters. Mr. Jones, another committee member, expressed qualms about the glass façade of the building.

The City Plan Director, Ms. Gelvarg, then gave a fairly lengthy recitation of the City Plan Commission's position on the PDD application in the form of two documents, her testimony was read to the committee and the public that was attending the meeting.

Public testimony was then presented which comprises thirty seven pages and included the testimony of several people including the plaintiff who gave a well-prepared and highly critical criticism of the project. The plaintiff prepared boards containing drawings showing the effect on

his property of the proposed structure which he distributed to the committee members and referred to in his presentation - it ran to eleven pages.

A Ms. Farwell who filed as an intervenor under §22a-19 of the General Statutes expressed disappointment with the process and indicated she had not had time to secure and thus present expert testimony and the next proposed meeting was only two weeks off February 11, 2010 giving little time to accomplish this.

The chairman responded to and disagreed with Farwell saying notice provisions had been complied with. He later said, in his opinion, a February 11th date was not unfair.

Members of the public then presented testimony, one from a 232 Bradley Street resident opposing the project who had already submitted a letter. A Mr. Cameron gave testimony - he assumed the project would be approved but wanted further conditions attached to it. He was concerned with the impact on the neighborhood; he said there was an issue as to the design, particularly the large courtyard which as another speaker noted, Ms. Ahern, increased the mass of the building.

The final hearing before the Legislative Committee took place on February 11, 2010; it commenced at 6 p.m. and concluded at 12:30 a.m. Again Mr. Morand felt it necessary to make a presentation in support of the application, followed by Ms. Cruishank. They attempted to respond to issues raised at the January 28th meeting. Attorney Hammer presented his views also.

Alderman Elicker basically questioned whether the building fits into the neighborhood given its "character and values, referencing Section 65." Morand and Cruishank responded in a discussion that went on for seven pages. A woman questioned how the building would be powered and several others spoke including two who expressed concern with the people who lived on Bradley Street. There were supporters of the project, some living close to the site if not abutters who spoke in favor of it. Architects spoke in favor and against the application. A professional planning consultant spoke on behalf of the Urban Design League opposing the project and submitted a written report to that effect. His testimony and questions from committee members went on for fourteen pages. A Bradley Street resident voiced articulate concerns as to the application; he said the building did not fit in with the neighborhood, driveway access to the garage would increase noise. He and his wife also submitted written reports. A Mr. Spodick was opposed to the application and was permitted to speak twice.

A person who lived on Bradley Street and had a business there spoke in opposition to the application, he like the plaintiff had property abutting the south side of the PDD. A major concern was the noise from the south side driveway which would give access to the indoor garage. Several opponents were allowed to give lengthy presentations raising a variety of points.

A Mr. Owens spoke for several pages. He believed the building already on the site was quite a fine architectural work and claimed Yale could not claim to be "green" if the buildings

already there were torn down. He also said the massiveness of the building made clear that it did not fit in with the neighborhood and it would overwhelm abutting property.

The Dean of the School of Management then spoke and tried to respond to many of the criticisms and issues people had with the building. He listed the several reasons why the applicant believed the building must be the size that was being proposed.

The next speaker was Ms. Farwell who was with the New Haven Urban Design League. She set forth procedural objections to the meeting stating it had been hard to understand what the agenda was going to be. She said she thought "this was going to be an orderly group of expert witnesses and stated one of her most important witnesses could not be at the meeting but could appear on February 25th."

The chairman disagreed with what he said were Farwell's "misstatements" and disagreed with her characterization of the conversations he had with her.

Ms. Farwell then proceeded to give a detailed and articulate recitation of her objections to the application followed by several pages of comments by the Urban League's attorney. He submitted a letter raising various questions about the project and one of the Committee members asked if he could have a copy of those questions. On the face of it, it is difficult to understand how any confusion about the agenda or processing of the application limited or had any negative impact on what Farwell and the attorney had to say substantively. The attorney stated that the witness Farwell referred to was a town planner and asked that there be a continuance of the

Committee hearing until he could appear. No indication was given as to what this witness might offer or how what he could say could add to the thorough and knowledgeable testimony of Ms. Farwell. The chairman said the continuance request would be taken under advisement at the conclusion of the meeting but noted the public input aspect of the process began October 9, 2009, some four months before the present hearing. The chairman noted there was ample opportunity for the town planner to have submitted written testimony. Also the court would note that it is its understanding that the applicant started broaching the project and discussing it with neighborhood people in 2006. Also an attorney for the Urban Design League appeared at the December 2, 2009 meeting of the City Plan Commission and made comments. Ms. Farwell herself was present at the first meeting of the Legislative Committee on January 28, 2010 where it was announced that the next meeting would be on February 11th.

Interestingly the Urban League attorney was listed as the last witness on the sign up sheet but the chairman indicated other people present at the meeting would be allowed to present their views. Two other citizens spoke.

The meeting concluded with a presentation by the applicant from Mr. Morand and Ms. Cruishank. Some of the criticism about the application were addressed. Alderman Perez inquired about whether a study was made to determine whether the buildings already on the site could be used. He also expressed concern about whether anything could be or had been done to

reduce the impact of the proposed project and its building on the neighbors to the south along Bradley Street.

The application was then approved unanimously and the Committee recommendation was sent to the Board of Alderman.

That body held a brief hearing on the application in which Alderman Lemar who was on the City Plan Commission and chaired the Board's Legislative Committee spoke favorably of the application. One alderman from the East Rock area expressed problems with the building's vast size but noted most neighborhood people, "the vast majority," were in favor of the PDD although some were opposed. He said he was voting for the PDD in light of neighborhood support. Another alderman, who was the only one voting against the project, did so because he expressed problems with the whole PDD process. Several alderman spoke in favor of the application and it was noted by people who were on the Legislative Committee that that body heard eleven hours of testimony.

The court concludes after examining the hearing transcripts, in light of the record, that the PDD hearing and final approval, apart from the separate question, as to whether that approval complied with Section 65 requirements, was not the result of arbitrary and capricious action by the Plan Commission or the Legislative Committee. People pro and con were given ample time to present their views, each body scheduled a second hearing to allow for a further presentation of views, and various aldermen actively questioned the applicant and its representatives

sometimes reflecting problems they had with the application. Also literally scores of letters and reports were submitted by people opposed to and in favor of the application for examination by the City Plan Commission and the Legislative Committee of the Board of Alderman. In sum the court concludes the approval of the PDD application was not illegal or arbitrary insofar as those requirements for court review of this legislative action are separate considerations apart from the substantive consideration of whether the PDD conformed to the Comprehensive Plan and normal police power requirements.[4]

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[4] The plaintiff notes that the City Plan Department in accordance with Section 64(b) of the Zoning Ordinance provided a report to the Board on the application. It is noted that several pages of this report are taken verbatim from the application for the PDD filed by Yale. There is no attribution of this language to the applicant. The Commission relied on this report and made few alterations. Thus there could not be said to be a critical review by city staff.

But the applicant's October 13, petition was available to the Commission and all who cared to examine it so it is difficult to claim all this was surreptitious. The city plan report refers to attachments to the application, including a traffic report, material samples and diagrams. There is little evidence of a predetermined charade beyond this. The Commission itself held two hearings, the Legislative Committee held two more. The applicant did not appear to believe its application was "in the bag" (to use the vernacular). It modified its building design after the October 13th application and worked out objections the Lawn Club had by the last Legislative Committee meeting. The Plan Department after reviewing the application obviously agreed with it, how in the process could it have conducted its own public hearings to address the "surrounding neighborhood" issue which the court believes is central to resolving the case.

The hearings before the Board of Alderman were not very lengthy or, considered in themselves, very informative on the complicated issues presented by the application. But the task of examining the application is left to the Legislative Committee of the Board which held hours of hearings before approving the application. What procedural due process argument would require, unless the laws of infinite regression, a repeat exhaustive performance by the Board?

(ii)

Now the court will set forth the Section 65 standards and then conduct a review of the Comprehensive Plan insofar as it refers to factors and requirements that have a bearing on this application.

Under subsection A of Section 25 it says "A planned development, to be eligible under (Section 25) must be:

1. In accordance with the comprehensive plans of the city, including all plans for redevelopment and renewal.
2. Composed of such uses, and in such proportions as are most appropriate and necessary for the integrated functioning of the planned development and for the city;
3. So designed in its space, allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the city; . . ."

Campion held Section 65 does not confer unlimited discretion to the City Plan Commission and the Board of Alderman because that discretion, as noted, is subject to judicial

review as to whether the PDD approval is (1) in accord with the comprehensive plan and (2) reasonably related to the normal police powers, 278 Conn. at page 531.

(iii)

The court has listed the Section 65 requirements which as noted also requires conformity with the Comprehensive Plan. The court will now discuss the various sections of the Comprehensive Plan and its concerns as it relates to issues presented by this case with reference and comparison also to Section 65.

(a)

A central feature of and a topic repeated throughout the Comprehensive Plan with a whole separate chapter devoted to "Housing and Neighborhood Planning," (Chapter IV) is the importance of neighborhoods to the city.

The introduction at page I.7 makes the following comment under the heading "neighborhoods":

> "Neighborhoods. City neighborhoods are a unique resource, with quality housing and neighborhood commercial districts. There is a sense of proximity between the neighborhoods and downtown/other larger destinations. Preservation of neighborhood character is at risk from inappropriate physical design, site planning, transportation issues and deteriorating buildings. Adding density should be balanced by amenities and open space."

Chapter II is a summary of the plan; at page 5 it notes that "city neighborhoods have unique qualities that contribute to an agreeable urban living environment . . . The plan recognizes a need to steward and enhance this asset, reaffirming the city's commitment to homeownership,

mixed use neighborhoods and aesthetically pleasing environment and neighborhood cultural identity."

Chapter IV which deals with Housing and Neighborhood Planning in its recommendation section gives these admonitions - the Zoning Ordinance must be revised "to restrict the inappropriate development of high density multi-unit buildings where such development is not in keeping with the prevailing neighborhood character." It then says there is a need to "consider the impact of new development on the existing urban fabric relative to traffic, noise, public convenience, public safety, aesthetics, site design and layout, etc." (II page 15). This "recommendations" section is prefaced by a general comment that "While the central core (of the city) is well-framed by a grid of nine squares, the balance of the city is an organic collection of, among other features, residential neighborhoods, commercial districts, open spaces, institutions and industrial districts. These qualities are often noted for their diversity and livability, thereby creating a unique and celebrated 'sense of place' ", (p. 13).

The City Plan Commission which created the plan also notes in the plan summary that "The Commission's directive is to elevate the quality of development in New Haven and to achieve a high standard of design stewardship and environmental protection," Chapter II at page 2.

The foregoing comments and concerns are well-summed up in Section 65 at section A(3) which interestingly enough was formulated years before the latest revision of the Comprehensive Plan in 2007.

Section 65 seems to make explicit what the Comprehensive Plan suggests - design as such is a factor to be considered along with the requirement of complementing the design and values of the surrounding neighborhood. A difficult consideration for the court is what is meant by "neighborhood" let alone "surrounding neighborhood" in applying these criteria. This will be discussed more fully when the court tries to apply these criteria to the present application and its particular facts.

(b)

The Plan at several points underlines a concern with the environment.

The Comprehensive Plan at two points in Chapter II and Chapter IV states as a goal: "to promote the urban environment through energy efficient design, green spaces, community gardens and other pervious landscape treatments." In the Economic Development Section (Chapter V) it says the zoning ordinances should reflect the commitment to sustainable economic development and generally recommends a need to: "Elevate site development standards by reducing the amount of on-site impervious surface, increasing landscaped areas, lowering the maximum allowable FAR[5] and reducing allowable signage."

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[5] FAR is the floor area ratio which, in effect serves as a limit on the dimensions of a

In the Chapter on Economic Development it states that . . . "economic development in the city is dependent on the quality of surrounding environments to support high-end business development. To achieve this, attention must be paid to environmental design, pollution control, aesthetics, transportation/access and the public infrastructure within and around the city's business districts." In a following paragraph entitled Green Design it notes . . . "attention must be paid to green building design by encouraging the development of environmentally sustainable buildings that meet or exceed energy targets (e.g. Energy Star, LEED certification); provide for daylighting; minimize transportation movements; and recycle and/or control waste streams." (Page V17).

In this regard the Chapter on Transportation generally recognizes a need to reduce traffic congestion and a desire to encourage transit orientated development. At one point it states that "system preservation is largely dependent on a model shift away from single occupant vehicles to public transportation systems," (VIII.18). Various modes of public transportation are discussed and sought to be encouraged and at VIII.15 it states that "over time failure to balance transportation investments will continue to have environmental and economic consequences." In the introductory chapter II "Plan Summary" the Environment section at II20 notes a direct link in enhancing environmental quality and developing walk to work, bicycle, and transit based initiatives.

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building relative to the lot it is to be located upon.

At II.II it states compliance with environmental regulations "should be included as a condition of a city land use approval . . ."

(c)

A major chapter of the Comprehensive Plan is devoted to "Economic Development", Chapter V. The Plan Summary also says "the plan recommends focus and enhancement of the city's neighborhood commercial district," (II.4). These neighborhood orientated commercial districts are said to be "essential to the quality of life in the city's neighborhoods. At page V.II, however, it says, "The neighborhood commercial districts are the most at risk sections of the city." Threats from large chain stores and suburban strips are noted.

Yale's importance to the economic health of the city is recognized at several points. The "new economy" is "focused on advanced manufacturing, health care and education. All three are knowledge based . . ." They benefit from Yale and other educational institutions and their technology transfer and academic support. The Economic Development section notes that the basic economy is divided into three sectors "(a) education (b) advanced manufacturing and (c) health care." The strength of the education industry includes a "higher education cluster" including Yale which is listed first. In this 2007 plan a chart is included on page V.4 which shows employment in the "education services" area is over three times more than the next economic sector which is "chemicals and allied products," see page V.4.

. . . . .

The Comprehensive Plan and Section 65 must be read together. The plan can be considered as placing Section 65 in context and is an aid in determining its ambit even if it is not viewed as part of the Comprehensive Plan.[6]

4.

The court will now apply the requirements of Section 65 and discuss whether in light of the record it was an appropriate exercise of legislative discretion for the Board of Alderman to find they have been met and whether that finding was in accord with the Comprehensive Plan.

(a)

The finding under subsection A(1) of Section 65 that the PDD application was in accordance with the comprehensive plan.

The issue of building design and how the proposed structure will or will not fit in with the surrounding neighborhood will be addressed in the discussion of subsection A(3) of Section 65.

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[6] As noted, the review is complicated, at least in the court's opinion, by the fact that Section 65 treats the first prerequisite, accordance with the comprehensive plan, as a separate category from questions of design and values of the surrounding neighborhood where the PDD is to be located and the qualities of any proposed building - the third test for the approval of a PDD.

In that subsection these matters are explicitly addressed. The Comprehensive Plan has some relevant comments on these issues which will be discussed in that portion of the opinion.

This means that the portions of the plan concerned with economic development and the environment are the template against which the PDD approval must be examined in this portion of the decision.

(a)

The court will first discuss that aspect of the comprehensive plan that deals with economic development - does the PDD approval in this case satisfy that requirement of Section 65 which requires accordance with the plan which is concerned with economic development.

From the presentation made by Yale representatives it seems apparent that a primary goal in making this application was to consolidate the management school in one location; now it is scattered in several buildings which detracts from its competitiveness with other such schools. The PDD will allow the acceptance of more students which will result in an increase in faculty. One spokesperson for the applicant added that just under 200 students could be added to the school. Several letters in the record indicated that such increases will result in greater economic activity including apartment rental. The letters were submitted by neighborhood organizations and a citywide economic development organization as well as several individuals. Support was received from the Chamber of Commerce as well as the OMNI Hotel - a large hotel in the downtown area which believed the project would result in "creating additional room nights for

visiting students and faculty as well as meeting space for program events." One letter pointed out that: "Restaurants, retailers, landlords, and other service providers will benefit from the economic boost provided by expanded student body and faculty, and this is a pereneal gain to the New Haven economy beyond the one-time construction spending."

The comprehensive plan underlines Yale's importance as a major component of the "new economy." The increase in economic activity just discussed will obviously benefit local neighborhood commercial areas which the plan says are threatened. The record notes at more than one place that student and faculty live in the environs of the school and any increase in their numbers would help neighborhood stores. In general the education sector of the economy is a major component of the city's entire economy as the plan indicates so any increase in that component would benefit the entire economy; for example page V.4 of the Comprehensive Plan, as noted, indicates that the education services area of which Yale is an important part employer over three times as many people as the next closest economic sector. The applicant indicated the project if carried out would result in almost 200 more students a year being accepted. This was not controverted and it indicates the need to hire more faculty and supporting staff besides creating a need for commercial establishments to possibly hire more employees to service the added student body which apparently tends to live in the city. More indirectly the record also revealed that, at least to some extent, graduates of the School of Management stay in New Haven

to pursue their careers after graduation. The city cannot help but benefit economically from this factor - what business can they draw in, where will they spend much of their future earnings?

The court finds that it is clear that there is full conformity to the Comprehensive Plan insofar as it has as a goal the promotion of the city's economic development. In reaching this conclusion the court would note that it has not attached any importance to the fact that this project will result in several million dollars in the form of building permits for the city's coffers or the fact that the project will, in these distressed times, bring about work for many firms and workers in the construction industry. Several union representatives quite understandably spoke in favor of this project. But to accept these observations as evidence of compliance with the economic development goals of the Comprehensive Plan is to engage in conclusory reasoning. Even if Yale had decided to use the former buildings on this site and renovated them or build a smaller building there would be a need for building permits and union labor.

(b)

The record in this case has extensive observations and comments relative to environmental impact. The preexisting site had asphalt pavement for parking of 196 vehicles on three sides of the two existing buildings. The lot was obviously impervious. Under the proposed PDD this parking area will be removed because underground parking will be provided. The danger to the environment presented by gasoline vehicles on an impervious surface with water runoff is obvious. The proposed School of Management (SOM) building has a lot coverage of

45% including the courtyard and whereas the RM2 and RO districts which had shared this site had respectively a 30% and 25% maximum. It is true that the proposed building is quite large but it does not bring about a lot coverage to equal the lot coverage of the older buildings on the site if added to the parking area. In fact green space is increased from 26% of lot coverage to over 40%. Trees will be lost but the applicant plans to plant a large number of trees.

In any event water runoff from the site is estimated to be substantially reduced and some of the water runoff will be used to irrigate the green space that will be located on the site. The building was also designed to comply with New Haven and Greater New Haven Water Pollution Control Authority standards.

Air quality can be negatively affected by vehicular traffic and congestion as the Comprehensive Plan recognizes. Presently the School of Management is located in several buildings at various locations. Consolidation of operations would tend to keep vehicles off the streets. Also the record indicated many students do not own motor vehicles and will sometimes live in the neighborhood around the school. The proposed building provides bike racks and showering facilities inside the building.

Keeping motor vehicle use in mind, the applicant intends to continue the permitted use of a pedestrian and bike pathway across the site to Whitney Avenue which can be used by SOM students and faculty. It is also available to other members of the Yale community and to local

residents who wish to cross the site for purposes which could include access to work or commercial locations.

The buildings on the site at the time of the application were used for university offices throughout the year. The SOM building will operate on a normal university schedule which would include vacations and, the usual summer break. This would reduce vehicular traffic.

Also Yale has a bus shuttle service that can give student access to the SOM site. A traffic study submitted to the City Plan Commission and the Board indicated the SOM proposal would have no impact on traffic.

As far as energy conservation is concerned the building's lights are on an activation system which turns them off when rooms are not in use. At night the south portion of the building will not be occupied and not have need of internal lighting because that area is devoted to administrative offices. In one of its submissions the applicant represented the following:

> "SOM sustainability goals:
>
> The University is seeking to achieve a LEED gold certification for the new SOM building. To that end, considerable efforts have been made to reduce energy use. Measures include reducing energy consumption through the use of insulated glass, a large horizontal window shade on the south exposure, demand control ventilation sensors, high efficiency fan and pump motors, displacement ventilation, and radiant heating in certain areas. In addition, renewable energy technologies may be utilized, such as photovoltaic panels which will be installed on the roof. Preliminary examination has shown that the building may also meet the Energy Star rating requirements."

There would appear to be sufficient compliance with the environmental concerns of the Comprehensive Plan.

ii

The conclusion reached that the proposed PDD is "composed of such uses, and in such proportions as are most appropriate and necessary for the integrated functioning of the planned development and for the city" (see Section 65A(2)).

It is difficult, for the court at least, to ascertain the actual bearing of this requirement. The word "uses" and the context in which it is placed seem to be referring to situations where there is a PDD application wherein a variety of possible uses are contemplated. The question would arise as to whether the uses are so diverse as to make the "integrated functioning" of the PDD unlikely from the perspective of traffic control, pedestrian use, aesthetic design, environmental issues, and even economic feasibility.

But the underlying districts, RM2 and RO, which the PDD supersedes both permit university uses and the PDD merely replaces one type of university use with another. Apart from whether the other requirements of Section 65 have been met there does not seem to be any question that the SOM building has been designed to function as an integrated unit to accomplish its one stated purpose - operating an efficient graduate school from one building and thus consolidating SOM operations which had been operating in several buildings.

The RM2 and RO districts have different requirements as to building height, lot coverage, and sideyard requirements and they occupied a site controlled by one entity. Given the applicant's goal of an expanded and improved SOM program, the PDD solution would seem to have made Yale's task easier in achieving that goal considering the fact without approval of the PDD proposal it would have been more difficult to achieve on the existing zones. Converting the site to RM2 or RO designation would not have permitted erection of the building the applicant said it needs to accomplish its goals.

As for the requirement that the PDD be composed of such uses and proportion as necessary for the integrated functioning of the city, (1) for obvious tax reasons the city has an interest in not increasing Yale's footprint in the city and allowance of the PDD on the site would remove that temptation from the university (2) the city has an interest in the positive economic consequences in allowing the PDD which have been discussed (3) consolidation of SOM operations in one building as opposed to several could have some minor traffic benefits and promote use of Yale's shuttle system for transportation to this one location.

The court concludes the Board was well within its ambit of legislative discretion in finding that this requirement has been met.

(c)

Pursuant to Section 65A(3) the Board concluded that the PDD is "so designed in its space, allocation, orientation, texture, materials, landscaping, and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the city . . ."

The question is whether the Board correctly held within its legislative discretion that this Section 65 requirement was met. This case really turns on this issue. There is little or no appellate case law on how this language is to be interpreted or applied. At the risk of being repetitive the court will discuss some of the problems that must be addressed in interpreting and applying this language.

As previously discussed, should Section 65 be considered to be a part of the Comprehensive Plan? It is included in the Zoning Ordinances and Planned Development Districts are referred to in the Comprehensive Plan. The city's Zoning Map shows numerous, previously approved, PDDs - there are apparently well over one hundred. But why is this an analytical problem? Section 65 itself in subsection A(1) states that the PDD application must be found to be "in accordance with the Comprehensive Plan." Was this subsection A(3), written so as to be an addition to the accordance with the plan requirement? That does not seem to make much sense since the accordance with the Comprehensive Plan requirement is a diktat, stated

first, and applicable to the whole application process. What is, in effect, statutory language, should be read together so that each part complements the other and does not conflict with other parts, *Hutchison v. Board of Zoning Appeals*, 140 Conn. 381, 384, 385 (1953); as said in *Hatt v. Burlington Coat Factory*, 263 Conn. 279, 310 (2003): "The legislature is "presumed to have created a harmonious and consistent body of law." Subsection A(3) in the court's opinion is best viewed as amplifying and explaining the requirements of the Comprehensive Plan. The court has already discussed the importance of "neighborhood" in the plan and the Comprehensive Plan also discusses design. In the first section under "Urban Design" at II.2 it says "Therefore, the plan recommends a higher review standard, incorporating aesthetic preservation and design considerations, as part of the development review process." If anything subsection A(3) amplifies the Comprehensive Plan and does so in such a way as to complement the plan's concerns with neighborhoods and what is called the urban fabric.

Section 65 says a PDD application must succeed in "complementing the design and values of the surrounding neighborhood and showing such unusual merit as to reflect credit upon the developer and upon the city" (emphasis by court).

What might be called the "surrounding neighborhood" concern in passing on a PDD application or any other zone change is not some consideration in addition to or operating outside the necessary evaluation of whether the PDD conforms to the comprehensive plan. It is just a factor to be examined in order to determine if the PDD is in fact in conformity to the

comprehensive plan, given the need for municipalities to adjust their comprehensive plan to growing and changing needs of city life as indicated in *Campion*. As said in numerous cases and specifically in *Dutko v. ZB of Milford*, 110 Conn. App. 228, 240 (2008) when considering the propriety of any zone change: "The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community." The surrounding area, however, is part of the wider community and its interests cannot be ignored in the best interest equation. Or to come full circle, the Comprehensive Plan expresses the interests of the community and this city's Comprehensive Plan has a concern with the impact of development on surrounding neighborhoods, the relevant community.

The foregoing sets forth the framework of any analysis but then it only gets more difficult. What is meant by "surrounding neighborhood." It should be noted that "complementing the design and values of the neighborhood" is not the language used; the language used is "surrounding neighborhood." In the "Community Overview" section of the Comprehensive Plan, Chapter III it talks of the Hill and Fairhaven neighborhoods, East Rock Westville and Downtown as neighborhoods, as well as the Wooster Street, West Rock, West River and Prospect Hill neighborhoods; also see list of neighborhoods in section of plan indicating data relied upon where land use in the city is discussed. Some of these "neighborhoods" cover fairly large tracts of land, see pages 17 and 18 of appendix. At page 9 of the Appendix which is entitled "Geography and Physical Setting" the second map is entitled

"Neighborhood and Planning Boundaries." An "East Rock" designation appears to run from a line just above Trumbull Street and just below Bradley to the Hamden border. It would be silly to say that in applying the language of A(3) of Section 65 the design and values of the surrounding neighborhood would necessarily encompass an examination of such a large area for impact purposes. "Surrounding" in the court's opinion means that aspect of the urban setting which would surround an area sought for PDD development.

What are the design and values of the surrounding neighborhood?

(1)

One set of the objections to the application and the building it proposed centered on its lack of integration with Whitney Avenue. Interestingly some posit a broader definition or scope for "neighborhood" as used on Section 65 than the immediate environs of the site, i.e., Lincoln and Bradley Streets.

The court will refer to the criticisms made in this regard. A Mr. Festa, who is a registered architect talked of the overbearing aspects of the building being proposed. It is 350 feet in length and the planned roof overhang just emphasizes its great length - the building is "out of scale with its surroundings." An Orange Street resident, who considered himself part of the East Rock neighborhood, said the design stood in "contradiction of the loveliness that (he) thought of as one goes down Whitney Avenue past Peabody Museum and the adjoining apartment buildings . . ."

Another resident of Audubon Street, a couple of blocks south of Bradley Street opined that the stretch of Whitney Avenue from Grove Street to Hamden is "uniquely gracious and harmonious. It a core that defines the character of New Haven and Hamden." This '60s ugly modern building will dominate Whitney Avenue. The Connecticut Trust for Historic Preservation sent a letter to the effect that the plans "will present a long, tall unbroken façade to (Whitney Avenue) far larger than anything else in the vicinity." Mr. Tagliarini at one point said the enormous character of the proposed building ruins the character of the neighborhood. The New Haven Preservation Trust said in a letter to the Legislative Committee to the Board that the building ignores the "common construction vocabulary along Whitney Avenue of masonry and in much smaller structures wood."

Along the same lines a registered architect said the building "would tear apart the urban fabric of this part of the Whitney Avenue corridor." The glassy façade reminds one of a commercial mall or airplane terminal.

A consulting firm retained by the New Haven Urban Design League stated in a letter that no other buildings in this area were of its proposed size and bulk. The letter conceded that the building was a "signature" building but was not appropriate when put in close proximity to a sound and vibrant neighborhood. The glass exterior was like no other exterior in the area.

Another letter said the building "declines to participate in the rich and stable architectural development of Whitney Avenue . . . the architectural type here is the solid, historic, and well built Whitney Avenue corridor. Even the Parthenon would bomb here . . ."

A letter from the New Haven Urban Design League also argued that the building would disrupt the rhythm and scale of Whitney Avenue; incongruous materials and proportions best describe this intrusive building.

There are two aspects to this question of integration into the surrounding neighborhood. One aspect of the problem is to address the design of the building standing alone. If it is extremely unattractive, it would be difficult to conclude it could fit into any surrounding neighborhood.

As said in "Zoning and Planning," 83 Am. Jur.2d § 71, page 107: "Aesthetic concerns can be a valid basis for zoning decisions, and cities may enact zoning ordinances to preserve aesthetics," see *Kobyluck v. Planning & Zoning Commission*, 84 Conn. App. 160, 170 (2004), *Munroe v. Zoning Board of Appeals*, 75 Conn. App. 796, 810-811 (2003); *Irwin v. Planning & Zoning Commission*, 45 Conn. App. 89, 98 (1997).

Although the court believes the design of the building must be evaluated in terms of the context in which it appears, we have to start somewhere in the analysis and quality of the design as such is a consideration. People who are architects, including Mr. Roche, who has an international reputation as an architect praised, the design of the building. A Lincoln Street

resident described it as awesome. At least one alderman felt the building was architecturally very attractive. Some of these people had Yale connections but that does not invalidate their opinions. Roche received an honorary degree but the court could not find any buildings planned by him for Yale. The court has previously cited the views of people opposed to the proposal on the basis that simply put the building was big, intrusive, ugly, and sixtyish in design. But given all the testimony the court cannot say that the Board went beyond the proper ambit of legislative discretion in concluding - as its discussion and decision finding Section 65 compliance indicated - that the building's design was praiseworthy and aesthetically pleasing.

(2)

The court reaches a similar conclusion on the broader question - does the proposed building fit into the context of Whitney Avenue. The building is to be placed fairly close to Whitney Avenue to make it fit into that context.

In addressing this problem the Board and the court in assessing its actions cannot put blinders on and ignore the buildings on the west side of Whitney Avenue, across from the subject property. There is the fairly large and long Peabody Museum which may be only two or three stories in height but has a fairly massive tower on the corner of Sachem Street and Whitney, many feet taller than the proposed building. To the north of it Yale will construct a 285,000 square foot Science Building and several hundred feet to the west, on a raised area of land no less, sits the Kline Laboratory a multi-story fairly modernistic red brick building. Abutting the

north side of the subject property is an area of commercial buildings. At 221 Whitney Avenue there is a six story office building with apartment buildings in the immediate area. Directly to the south of Bradley Street itself the resident at 266 Bradley Street, who gave very balanced testimony in opposing the application, noted he is already having to face commercial activity, dumpsters, etc. in property immediately to the south of his property. Not surprising since the three maps in the Comprehensive Plan showing "Downtown" display Bradley Street lying directly on its northern border. Bradley Street runs directly into Whitney Avenue.

The glass front of the building, given its length, obviously should be of some to any authority or court reviewing the decision of the Board approving the application. But, interestingly enough, one of the opponents of the project brought up two factors tempering this concern. He noted vertical columns along the façade will serve to increase the sense of height of the building; he also noted the roof overhang will increase the sense of length. But these very features break the solid façade of the glass front. We are not dealing with a flat white glass façade of a New York skyscraper.

Finally the court would note that the Board was within its discretion in concluding this building, insofar as it faces Whitney Avenue was not totally out of context because of the characterization of Whitney Avenue from Grove Street to the Hamden border as a "gracious" thoroughfare of dignified masonry and wood buildings. The court has noted the large buildings at Science Park, commercial activity on Whitney to the south of Bradley Street attested to by one

of the opponents of the project and commercial areas and buildings abutting the north of the subject property. Even the Comprehensive Plan does not support this characterization of the entire length of Whitney Avenue from Grove Street. In Chapter II, the "Plan Summary" chapter there is a section entitled "Proposed Land Use." It defines special "High-Density Residential" as one of the fifteen proposed land use categories. It says of these "special" sections as follows: "The Commission recommends a more restrictive zoning designation along significant thoroughfares, particularly Whitney Avenue, in order to prevent the encroachment of office or commercial uses and inappropriately scaled residential buildings and to preserve distinctive streetscapes" (II 26-27). A map after this section entitled "Proposed Land Use" has a code in which "Special High Density Residential" is colored red. But if one looks at the map it begins on Whitney running from the north border of Science Park which lies several blocks to the north of the subject property and the proposed building.

It should be noted that at the time the application was pending other buildings stood on the site set back from Whitney Avenue. One building received deserved praise from the pictures in the record, it was also well landscaped. Another building appears to be a non descript concrete office type building. The main attraction of these buildings was not only their physical design but the fact that the buildings on the site only covered 21% of the site and were separated particularly at the south side, from that boundary and its Bradley Street neighbors. But taking that preexisting site as a whole it can hardly be said that it contributed in an uncontradicted way

to the hypothesis of a "gracious" sweep of Whitney Avenue from Grove Street to the Hamden border. These buildings were surrounded by an unattractive asphalt parking lot. On the south side the lot seems clearly visible from Whitney Avenue (see aerial photos in the record.)

The court cannot find that the proposed building by its placement, size, and design leads inexorably to the conclusion that the Board exceeded the appropriate ambit of its legislative discretion insofar as its approval of the application concluded that the application could be said to complement the design and values of that aspect of the surrounding neighborhood which included frontage on Whitney Avenue. In plainer English it was not incongruence thereto.

(3)

For the court the most difficult aspect of the case is evaluating the Board's decision under subsection A(3) of Section 65 given the surrounding neighborhood, not with reference to Whitney Avenue to the west, but to the mostly residential properties on Lincoln and Bradley Street to the south and east, including the New Haven Lawn Club.

The court would make some preliminary observations. It is fair to say that most of the Lincoln Street residents support the application or have not expressed any opposition to it. The court will refer to some of the comments of these people, many of whom have Yale connections. That is hardly a surprise. Yale and its campus lies directly to the west of this area (see map at II.28 of Comprehensive Plan showing "Institutional" uses in Downtown and adjacent areas to the north and into Science Park); it is not surprising that faculty and students would want to live here

because of the easy access to university property - this would be a desideratum even if Yale never decided to make this PDD application or the legal system at the trial or appellate level were to hold the Board erred in granting the application. These people, therefore, have just as much right as Lincoln Street residents and as the plaintiff and the two other Bradley Street residents, who oppose the application as property owners, to express their views or more exactly the "values", their views represent. This of course does not mean that the differences in how the application affects these two sets of people can be ignored but it does set the ground rules for a fair debate.

Both sides have used the pre-existing zoning districts on the site, RM2 and RO, to advance their argument. The applicant argues that the site's division into these two zones made development difficult. That position is somewhat conclusory or after the fact, since the important predicate question for these PDD zones is whether the suggested development meets the requirements of Section 65. Also the argument advanced at one point is that under the existing RO designation, the Zoning Ordinances would permit an eleven story building and even a hospital. But there are no plans to erect a hospital or an eleven story building - the latter by Yale's own lengthy definition of its needs for a new, consolidated School of Management Building would not satisfy those needs. On the other hand references to RM2 and RO standards for side yard requirements, or permitted lot coverage by the plaintiff are not persuasive in a controlling sense. Thus in the Floating Zone context when a zoning board grants such a request "it alters the zone boundaries by carving a new zone out of an existing one," *Sheridan v.*

Planning Board, 159 Conn. 1, 17 (1969). The same is true of an approval of a PDD by the Board of Alderman. What this means, at least to the court, is that prior restrictions and requirements of pre-existing zones are not controlling considerations in passing upon a PDD approval - despite the fact that here, for example the lot coverage of the new building substantially exceeds that permitted in the pre-existing underlying zones or the side yards are reduced, or the building height in one of these zones is exceeded. That is the whole point of creating the concept of Planned Development Districts, to avoid the rigidity of Euclidean zoning and permit flexible planning, as the court noted in its introductory remarks and reference to *Campion* earlier in this decision, see *Campion* at 278 Conn. page 517-518.

However, the requirements and restrictions of underlying zones which a PDD would supercede do have relevance on the question of the "values of the surrounding neighborhood" which must be taken into account under Section 65. To a great extent such values can be inferred from what residents express as to their opinions about the nature of any proposed development which would bring changes to their neighborhood. Opinions in such a context reveal aspects of their neighborhood which are important to them.

In that sense underlying zoning requirements and restrictions in an area where a PDD is proposed say at least something about that neighborhood and what may be deemed important to its residents because they define their expectations about living there. One advantage of Euclidean zoning as opposed to floating zones and planned development districts is that it "is

designed to achieve stability in land use planning and zoning," *Campion* at 278 Conn. 529, quoting from a Maryland case.

With reference to the impact of the SOM building, on Lincoln and Bradley Street residents, the court will now try to determine whether, pursuant to the standards of review under *Campion*, the Board's conclusion that the requirements of subsection A(3) of Section 65 have been met is supported by the record. This will require also some reference to the Comprehensive Plan which in some respects defines the values that should be expected to permeate residential neighborhoods.

(a)

The lengthy back of the building faces the New Haven Lawn Club to the north and the east of the site and at least part of Lincoln Street. As to the club, its involvement with the application process started with the hearings before the City Plan Commission. It was represented by an attorney and the club chairman spoke. The initial problems centered on the operation of its driveway. The club also wanted a wider side setback. The club's chairman did say he thought the building design, however, was awesome. By the end of the process the club's concerns had been met on all issues with a wider setback and resolution of driveway problems. The club sent a letter to the Legislative Committee of the Board which was read at the January 28, 2010 meeting of the Board's Legislative Committee, in which its president said that based on

Yale's commitment to meet its concerns "the New Haven Lawn Club is pleased to support this project."

The owner of a professional building, called Bradley Street, LLC, who planned to move from New York to live in it, supported the project but wanted pedestrian access to the north side of the property. Important to the Commission was the apparently continued existence of a pathway from the east of the property through the property to Whitney Avenue for bikes and pedestrians. The applicant accommodated these requests which benefits neighborhood people but requested some restrictions on a 24/7 use of the pathway.

One Lincoln Street resident, interestingly enough, said: "It isn't perfection either objectively or from my own point of view but it is more than good enough and it has been arrived at through Yale's admirably painstaking negotiations with our community over the last three years." Another Lincoln Street resident sent a letter voicing a similar opinion and noted nothing Yale could have done would have pleased everyone. Despite the buildings narrowing the couple's view of the western sky they supported the application. It was also pointed out by one of these people that their immediate neighborhood is dominated by a five story apartment building on the north of the site.

One of the above Lincoln Street letter writers also appeared at the February 2010 hearing of the Legislative Committee also added that "looking out the backyard from 60 Lincoln Street I

see a decaying asphalt parking lot . . ." A former president of the Lincoln-Bradley Street Association said "a row of us" on Lincoln Street favor the project.

This is not to say all Lincoln Street residents supported the project. Several objected to the large size of the building that just did not fit in with the neighborhood. Some Bradley Street residents whose property does not abut the site also signed a petition and sent in letters with the same objection. One or two Lincoln Street people opposed the project because of what they perceived as the project's harmful effect on Bradley Street residents.

The Board, as well as the court passing on its actions, might very well have difficulty placing great weight on Lincoln Street objectors and Bradley Street objectors, unlike the plaintiff, who live at a distance from the building itself and thus hardly able to claim being overwhelmed by it. The building, admittedly very large, would be placed fairly close to Whitney Avenue, at least 200 feet from Lincoln Street if not more. At the time of the application the major portion of a very large, unattractive 186 space parking lot was fairly close to Lincoln Street. The plan called for a landscaped area of at least an acre to the rear of the building. Underground parking was to be used in the new building which would enter by a south driveway on the bottom south portion of the building. Loading docks would be inside of the building. Not only would the aesthetics of the residential neighborhood be improved, but the noise factor from cars traversing the parking lot would not continue. A university printing operation used a loading dock in the back of the one of the buildings on the site; trucks would come to this location as

early as 5:40 a.m. As noted the loading dock would be underground under the application plans. As noted under these circumstances it is difficult to see how the huge building size, considered alone, which faces and is purposely close to Whitney Avenue, would disrupt the tenor of the surrounding neighborhood for Lincoln Street residents and Bradley Street residents whose homes do not lie behind the south side of the SOM building or at least at some distance from it.

Interestingly at least one of the Bradley Street objectors who abut the site observed that the Lincoln Street people have been treated much more favorably than we have and; for example, suggested the driveway should be moved to the north, which would more directly impact Lincoln Street people.

(b)

In the court's view the most substantial challenge to the Board's approval of this application is presented by the effect of the PDD on the plaintiff, who lives on Bradley Street in a house whose rear is directly opposite to the south side of the SOM building, a resident who lives on the south side of Bradley facing the plaintiff's home and a person who lives two houses down from the plaintiff on the north side of Bradley Street. The two houses between this neighbor and the plaintiff are used as professional locations, neither of which registered an opinion for or against the project.

The plaintiff made two thorough, articulate, and well prepared objections to the project both at the hearing before the City Plan Commission as well as before the Legislative Committee

of the Board of Aldermen, complete with diagrams and pictures of the rear of his home. He lives there with his family and has built a pool in the rear of his house. The buildings on the site were over 120 feet from his rear property line and there was a buffer of trees along that property line. A wall, several feet in height, surrounds at least the rear portion of his property and a small bath house for the pool is placed against the rear wall.

It does not appear that the unattractive parking lot could be viewed from at least the first floor of the home. But it's occupants would have heard the traffic assessing the lot which used the south driveway which would have allowed access to that portion of the lot directly in back of his house or permitted drivers to proceed to the large rear portion of the lot which abutted the buildings that were on the site. Also the loading dock to the pre-existing building would appear to be close enough to emit noises from trucks using it that could be heard from the plaintiff's home.

The new building will provide access to the underground lot only on the south side by means of the south driveway running to the building from Whitney Avenue. The pre-existing lot allowed access by another driveway to the north of the site. This would seem to create an increase in traffic on the south driveway apart from whether more vehicles enter the site with the new building. But counsel for the plaintiff pointed out that this traffic would enter the underground lot at the south side of the building without some of it proceeding to the large above

ground lot that had been located to the rear of the building. The noise created by use of the above ground loading dock would, as noted, be eliminated.

The plaintiff raised the point that the pre-existing buildings had university office staff which would enter the building at a set period of time in the morning and exit similarly in the afternoon. His observation was that the SOM building would generate traffic all day. The report by Tighe and Associates secured by the applicant seemed to indicate no increase in traffic volume at the site; at least some students would access it through the Yale Shuttle service which the university was trying to encourage but there would presumably be office staff and faculty who would proceed to the site by way of motor vehicle. But there is nothing in the record to indicate faculty and staff would be entering and leaving the site throughout the day.

The biggest concern of the plaintiff appears to be the size of the SOM building especially as it encroaches on the peaceful and private use of his property. On the pre-existing site the closest building was 122 feet from his rear property line; it was 61 feet in height which included a buffer area between the driveway and the plaintiff's back wall. The same diagram submitted by the plaintiff indicates a change in these distances with the proposed SOM building placement. The distance between a building which will now be 81 feet high and the plaintiff's rear property line is about 39 ½ feet with a buffer varying from 18 to 20 feet - somewhat over 57 feet in total to somewhat over 59 feet.

Interestingly enough using the same diagram attached to plaintiff's post trial brief and part of the record, and the metric scale at the bottom of a plastic ruler the court roughly estimated that the distance between the plaintiff's home and his own rear property line is approximately 90 feet. Thus the distance from the dining pavilion at the rear of the home to the SOM building is something over 140 feet. Again from the diagram relied on by the plaintiff, the understandable concern (see sight lines) appears to be with the fact that there is a pool area in back which will be faced by this large structure. The buffer area was proposed to be 9 ½ feet and the applicant increased it by 10 feet which the plaintiff called "trivial."

The applicant, however, plans to place tall trees in the buffer zone and at one point the plaintiff does say this will still expose 15 or 20 feet of rooftop platform that would never be shielded by trees. This does not appear at first blush to be an enormous figure. But he pointed out it might take years for the trees to grow.

Directly related to these concerns is a factor brought up generally by opponents of the SOM building - the glare it will produce; it is after all a glass building. But the applicant has placed offices and administrative uses on the south side of the building which will have light sensors which will shut off lighting in rooms and offices that are not in use. One spokesperson for Yale said the building was designed so that all the active areas would be facing Whitney Avenue or the courtyard.

The plaintiff also claims there will be a fish bowl effect on his home of the SOM building were to proceed, but the SOM building does not surround his house on any side. He basically repeats the theme taken up by other opponents - this huge, massive building is incongruous with the surrounding neighborhood which has gracious homes in a tight knit community. But as noted previously the building fronts Whitney Avenue where other large buildings are located or to be located and they are in place at locations fairly close to the site.

Interestingly enough the plaintiff, from his testimony would not seem to harbor any objections to the building if the courtyard were eliminated thus increasing the side yard; but the result of that would still leave a massive building composed of the same material. Another Bradley Street opponent as well as the plaintiff also suggested that the driveway access should be shifted to the north. The applicant countered with the observation that if there was to be underground parking and loading docks a driveway to the north would not be feasible - this was due to the grade of the land; also the building would have to be moved further to the south. At the hearings nothing was offered to contradict this assertion. The applicant's representatives were also adamant that the courtyard was essential to the scholastic functioning of the school; it was a general feature of the university which was not invented for the purposes of this particular application.

Finally it should be noted that the plaintiff argued at one of the hearings that the project if approved would have a substantial effect on the value of his property. Homeowners are

permitted to testify as to the fair market value of their property; they are also allowed to testify as to their view on the diminution in value, as for example, caused by a nuisance, see cases collected in *Gregorio v. Naugatuck*, 89 Conn. App. 147, 156 (2005). But its also true that the only expert report submitted was one presented in the record from a real estate appraiser hired by the applicant who said residential property values would not be negatively affected by the SOM building, see "Real Estate Impact Study Proposed New School of Management Building" prepared by Arthur Estrada, MAI, SRA and his experience and qualifications on last page of report. He concluded the SOM building would have no negative impact on real estate values; he further said "the proposed development will have a positive influence on the overall environment at the subject location and surrounding areas."

All of the foregoing is not to say the foregoing concerns of the plaintiff are negligible; they certainly are part of any equation important in determining whether the Board acted properly in approving this application. The court will address this at the conclusion of the opinion after it discusses the objection of two close neighbors of the plaintiff directly to the south of the SOM building on Bradley Street.

Another opponent of the SOM project owns a house two houses down from the plaintiff. He lives in the front and has a therapy, acupuncture and therapeutic massage business in the rear of his home. His work depends on quiet and he fears he will have to move if the plans were approved due to the noise that will be generated by having the south driveway being the only

access to the underground garage - car and truck traffic would disrupt his business needs. The court has already discussed traffic and noise issues. This gentleman's house is closer to the large pre-existing rear parking lot with scores of spaces for cars accessing and traversing it and a noisy open air loading dock. The south driveway already provided access to the asphalt parking lot. Again, given these factors, the surrounding neighborhood design and values must at least in part be determined by what by way for example of noise and vehicular traffic that existed prior to and at the time of any application.

This factor is at least in one respect underlined by another opponent to this project who lives across from Bradley Street in a home just across from the plaintiff's home. He complained about the noise factor but interestingly enough said this would only add to the present noise from commercial uses - dumpsters, etc. - just to the south of Bradley Street. As to all these three properties the court is now discussing, they are literally enmeshed in commercial and institutional uses. As to the property owner across from the plaintiff on Bradley Street's south side and his concerns about the mass of the building and the glare and noise it will emit, the court has already noted the proposed building appears to be approximately 140 feet from the plaintiff's back door from diagrams submitted in this case by the plaintiff. The line to this individual's house on the south side of Bradley Street from that point would have to add the length of the plaintiff's house, the width of his front lawn, any sidewalk and curbing, the width of Bradley Street, the sidewalk on the south side of Bradley Street, the man's front lawn before getting to the house.

(3)

Based on the foregoing the court cannot conclude that the Board in approving this application acted arbitrarily or illegally in the narrow procedural sense or in the more substantive sense in finding the application comported with the Comprehensive Plan and met all the requirements of Section 65. The plaintiff has a heavy burden to show that the Board abused the legislative discretion granted to it. As previously discussed and underlined by *Dutko v. Planning & Zoning Board*, 110 Conn. App. 228, 231 (2008) decisions such as the one made here must be upheld "if they are reasonably supported by the record." The scope of review is very limited and it is not the function of a trial court to retry the case. Credibility of witnesses and determination of factual issues are within the powers granted to the entity acting in the capacity of a zoning authority. Whether a reviewing court would have reached the same result is of no importance. In effect the Board here acted as a formulator of public policy, id. p. 232. As said in *Protect Hamden/North Haven* supra: "Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment. The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission" (here Board acting on zone change), see 220 Conn. 543.

The court will not and cannot say that the application does not have some effects on the plaintiff as a property owner and perhaps but not as clearly on the two other Bradley Street

residents whose positions the court just discussed which they may consider to be negative. The language in an older case is relevant to this point. In *Bartram v. Zoning Commission*, 136 Conn. 89 (1949) the defendant commission changed the classification of a lot from a residence zone to a business zone. Several residents in the neighborhood opposed it and prevailed in the trial court on appeal. The Supreme Court found error and remanded the case to the trial court ordering it to dismiss the appeal. In part quoting from an earlier case the court said at pages 95-96:

> "However, where the value of property of an individual is seriously affected by a zoning regulation especially applicable to it, this fact imposes an obligation carefully to consider the question whether the regulation does in fact tend to serve the public welfare and the recognized purposes of zoning. Property owners in the neighborhood had no right to a continuation of the existing situation which could be effective against a decision by the commission reached legally and properly. The state, through the authority it vests in zoning authorities, may regulate any business or the use of any property in the interest of the public health, safety or welfare, provided this be done reasonably. To that extent the public interest is supreme and the private interest must yield. . . . The commission could not properly be held, upon the record in this case, to have acted in violation of law in making the change it did. . ."

Mallory v. West Hartford, 138 Conn. 495, 506 (1952) cited *Bartram*. There the town council allowed the expansion of a long established business district which was in the midst of a large residential district. The trial court dismissed the appeal and the Supreme Court upheld the dismissal. The court noted the residents of the districts opposed the change; the court said "such protests should be considered but are not controlling . . . The commission must look at the problem as it affects the town as a whole."

Section 65A(3) and it might be said certain aspects of the Comprehensive Plan also focus not on just "the town as a whole considerations but also on the effect in certain respects on the "surrounding neighborhood." The court has tried to analyze the positive effects, and values that will be supported but also some of the complaints. The court cannot say the Board abused its discretion in finding that, under all the circumstances of this case the application for a Planned Development District should be approved.

(4)

Section 65 also provides that the PDD be reasonably related to the normal police powers. That is regulations enacted in conjunction with or necessitated by any PDD must, pursuant to Section 2 be:

> "designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements."

The language is similar to that in Section 8-2(a) of the general statutes which authorizes zoning commissions of the various towns to pass zoning regulations.

The SOM building covers 44% of the land surface if the courtyard is included but it is a four acre site and the building is located towards Whitney Avenue allowing a landscaped area of approximately one acre to the rear of the building.

It could be said that one driveway access to the underground parking on the south side of new building will increase traffic congestion on Whitney Avenue but that is a fairly broad thoroughfare. Also the pre-existing use with driveway access to the above ground parking lot via Pearl Street; the SOM building with its south driveway from Whitney Avenue would more likely draw traffic using narrower residential streets to the west of Orange Street to access the site. Furthermore the pre-existing site had university buildings housing offices which would have a 9 to 5 schedule creating traffic during respective morning and afternoon rush hours.

The school will operate on the regular university schedule which will mean traffic will also be reduced during vacation weeks and summer months.

As to overcrowding and concentration of population, there will be many people on the property during school operation, some in offices even when school is not in session. But, of course, the PDD does not contemplate residential 24/7 use of the site and as a school use, as noted, full time year round school use is not to be expected.

The court concludes this Section 65 requirement has been met.

CONCLUSION

Based on the foregoing the court cannot find the Board acted outside the bounds of its permitted legislative discretion in approving the PDD. The appeal is therefore dismissed.

Thomas J. Corradino
Judge Trial Referee